

### **REMARKS**

Applicants respectfully request the Examiner to reconsider the present application in view of the foregoing amendments to the claims and the following remarks.

#### ***Status of the Claims***

Claims 2-4 and 8-10 are currently pending in the present application. The Office Action is non-final. Claims 2 and 3 have been amended without prejudice or disclaimer. No new matter has been added by way of the amendments. For instance, claim 2 has been amended to depend from claim 3. Also, claim 3 has been amended to include a bulk density range for a detergent particle found within the specification at page 29 lines 19-21 and Table 2, page 47.

Claims 1, 5-7 have been cancelled without prejudice or disclaimer. Claims 8-10 are new. Support for claim 8 can be found in the present specification at page 15, lines 19-23. Support for claim 9 can also be found in the present specification at page 8, lines 15-17. Additionally, support for claim 10 can be found in the present specification at page 20, lines 4-7. Thus no new matter has been added.

Based upon the above considerations, entry of the present amendment is respectfully requested.

#### ***Examiner Personal Interview***

Applicants' representatives thank the Examiner for extending the courtesy of the personal interview conducted on March 26, 2008. Applicant's representatives discussed the above claim amendments with the Examiner in an effort to resolve the outstanding issues within the Office

Action dated February 13, 2008 (hereinafter "Office Action"). Prior to the interview, Applicants' representatives provided an amended claim set, in an effort to further distinguish the claims and overcome the present rejections.

The Examiner stated that with regard to claim 1 the prior art will be difficult to overcome (due to claim 1's current product by process format), unless there is some showing of unexpected results. Moreover, the Examiner reminded Applicants' representative that even if a 37 C.F.R. § 1.132 Declaration showing unexpected results is submitted, claim 1 would still have to be limited to what was shown in the Declaration.

As a more viable alternative, the Examiner suggested that if the comprising language in claim 1 was changed to "consisting of" language, followed with additional details of (A) and (B) this could be helpful in overcoming the prior art. The Examiner stated inserting specific optional ingredient into the claim may also be helpful.

Applicants' representative inquired if the above approach would be sufficient to overcome the prior art rejection. The Examiner stated that she could not determine whether the above changes would be adequate since the amendments would require a new search of the prior art. The Examiner did continue to maintain that it may still be difficult to overcome the outstanding rejection due to the product-by-process terminology found in claim 1.

With regards to claim 2, the Examiner recommended that this claim be amended to depend from claim 3.

With regards to claim 3, the Examiner stated that claim 3 had the best chance of moving forward towards patentability.

Regarding claim 6, according to the Examiner, the 447 g/L density is appropriate for claim 6 assuming that claim 1 is amended to recite "consisting" language.

Applicants' representative provided new claims 8-10, which were amended during the interview to method claims and to depend from claim 3. The Examiner did not state any further no issues with these claims if the recommended amendments were made.

Applicants' representative contacted the Examiner by telephone on May 8, 2008 to further clarify the Examiner's comments within the Examiner's Interview Summary. The Examiner indicated within the Substance of the Interview Section that if claim 3 was amended so that the bulk density was changed from 600 g/L to 447 g/L, Kubota *et al.*, EP 0,969,082 (hereinafter "Kubota *et al.*") would be overcome.

The Examiner clarified her statement that the density indicated was from Table 1 and was for a base particle not a detergent particle.

Applicants' representative indicated to the Examiner that a bulk density range of 150 g/L to 446 g/L for the detergent particle within claim 3 would have support within the present specification at page 29 lines 19-21 and Table 2, page 47. The Examiner indicated that a bulk density range of 150 g/L to 446 g/L for a detergent particle was acceptable and overcomes the 35 U.S.C. § 103(a) rejection based on Kubota *et al.* as well as overcomes the other rejections including the 35 U.S.C. § 112, first paragraph, written description rejection since support can be found within Table 2 of the specification.

***Rejection Under 35 U.S.C. § 112, First Paragraph, Written Description***

Claims 1 and 3-7 stand rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement. The Examiner asserts that the claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Claims 1 and 5-7 have been cancelled herein without prejudice or disclaimer, thus obviating the rejection as to these claims. Applicants traverse the rejection as to the remaining claims as set forth herein.

Although Applicants disagree, in order to further prosecution, they have amended claims 2 and 3, without prejudice or disclaimer, to further define the invention. Claim 2 was amended to depend from claim 3. As indicated above, the new limitation for claim 3 “detergent particles have a bulk density of 150 to 446 g/L” should resolve the issue.

The pending claims encompass subject matter that provides adequate written description support to show that the inventors, at the time the application was filed, had possession of the claimed invention. Applicants respectfully request reconsideration, and subsequent withdrawal of the present rejection.

***Rejections Under 35 U.S.C. § 102(b)/ 35 U.S.C. § 103(a)***

Claim 2 stands rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over France *et al.*, U.S. Patent No. 6,063,751 (hereinafter “France *et al.*”).

Claims 1-2 and 5-6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Mort, III *et al.*, U.S. Patent No. 6,258,773 (hereinafter “Mort”).

Claims 1 and 5-6 have been cancelled herein without prejudice or disclaimer, thus obviating the rejection as to these claims. Applicants traverse the rejection as to the remaining claims as set forth herein.

The Examiner is kindly requested to reconsider the rejections for the following reasons.

*Legal Standard for Determining Anticipation*

For anticipation under 35 U.S.C. §102, the reference “must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present.” (MPEP §706.02, Rejection on Prior Art [R-1]). The Federal Circuit has held that prior art is anticipatory only if every element of the claimed invention is disclosed in a single item of prior art in the form literally defined in the claim. *See Jamesbury Corp. v. Litton Indus. Products*, 756 F.2d 1556, 225 USPQ 253 (Fed. Cir. 1985); *see also Atlas Powder Co. v. du Pout*; 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984); *American Hospital Suppl v. Travenol Labs*, 745 F.2d 1, 223 USPQ 577 9 (Fed. Cir. 1984).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” (*See, Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)). “When a claim covers several structures or compositions, either generically or as alternatives, the

claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art.” *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

*Legal Standard for Determining Prima Facie Obviousness*

*Graham v. John Deere*, 383 U.S. 1, 17, 148 U.S.P.Q. 459, 467 (1966) has provided the controlling framework for an obviousness analysis. A proper analysis under 35 U.S.C. § 103(a) requires consideration of the four *Graham* factors of: (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims that are at issue; (3) resolving the level of ordinary skill in the pertinent art; and (4) evaluating any evidence of secondary considerations (e.g., commercial success; unexpected results). (See, *Graham v. John Deere*, 383 U.S. at 17, 148 U.S.P.Q. at 467).

*Distinctions Over the Cited Art*

*Remaining Rejections based on France et al. and Mort.*

As the Examiner indicated in the Office Action, the rejections were based on the previous product by process language of claim 2. Applicants have amended claim 2, without prejudice or disclaimer, to depend from claim 3, which is a method claim. Since claim 2 is no longer a product by process claim, the Examiner has a higher burden to prove that the present invention is

anticipated by the cited references. Neither France *et al.* nor Mort disclose each and every element as set forth in the claims.

Thus, because of the lack of disclosure of all features as instantly claimed, the rejections in view of France *et al.* or Mort are overcome. With regards to an obviousness rejection, based upon the amendments and the interview described above, the Examiner indicated that these rejections are overcome.

Applicants respectfully request reconsideration and withdrawal of the present rejections.

***Rejections Under 35 U.S.C. § 103(a)***

Claims 1-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kubota *et al.*

Claims 1-2 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Riddick *et al.*, U.S. Patent No. 5,573,697 (hereinafter "Riddick").

Claims 1 and 5-7 have been cancelled herein without prejudice or disclaimer, thus obviating the rejections to these claims. Applicants traverse the rejection as to the remaining claims as set forth herein.

Reconsideration and withdrawal of these rejections is respectfully requested based on the following considerations.

*Legal Standard for Determining Prima Facie Obviousness*

*Graham v. John Deere*, 383 U.S. 1, 17, 148 U.S.P.Q. 459, 467 (1966) has provided the controlling framework for an obviousness analysis. A proper analysis under 35 U.S.C. § 103(a) requires consideration of the four *Graham* factors of: (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims that are at issue; (3) resolving the level of ordinary skill in the pertinent art; and (4) evaluating any evidence of secondary considerations (e.g., commercial success; unexpected results). (See, *Graham v. John Deere*, 383 U.S. at 17, 148 U.S.P.Q. at 467).

*Distinctions Over the Cited Art*

***Rejection of claims 2 based on Riddick.***

Applicants have amended claim 2, without prejudice or disclaimer, to depend from claim 3, which is a method claim. Further, Claim 3 now recites the limitation “wherein the detergent particles have a bulk density of 150 to 446 g/L.”

The Examiner stated within the Office Action that Riddick teaches detergent granules having a bulk density of greater than about 550 g/L, Riddick does not teach a spray-drying method for making the base particles and fails to disclose the particle sizes and bulk density of the detergent particles in values within those recited within the present claims.

By the above claim amendments, it is clarified that the technical concept is quite different between the present invention and Riddick. As the Examiner indicated in the interviews discussed above, the present amendments overcome the rejection based on Riddick.

***Rejection of claims 2-4 based on Kubota et al.***

As indicated above, Applicants have amended claim 2 to depend from claim 3, which is a method claim that now recites “wherein the detergent particles have a bulk density of 150 to 446 g/L.”

By the above claim amendments, it is clarified that the technical concept is quite different between the present invention and Kubota *et al.* As the Examiner indicated in the interviews discussed above, the present amendments overcome the rejection based on Kubota *et al.*

In light of all the above arguments and amendments, the *prima facie* case of obviousness was not established. Applicants respectfully, request reconsideration and subsequent withdrawal of the above rejections.

**CONCLUSION**

In view of the above comments, Applicants respectfully submit that the claims are in condition for allowance. A notice to such effect is earnestly solicited.

Should there be any outstanding matters within the present application that need to be resolved, the Examiner is respectfully requested to contact Paul D. Pyla, Reg. No. 59,228, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: May 13, 2008

Respectfully submitted,

By 

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